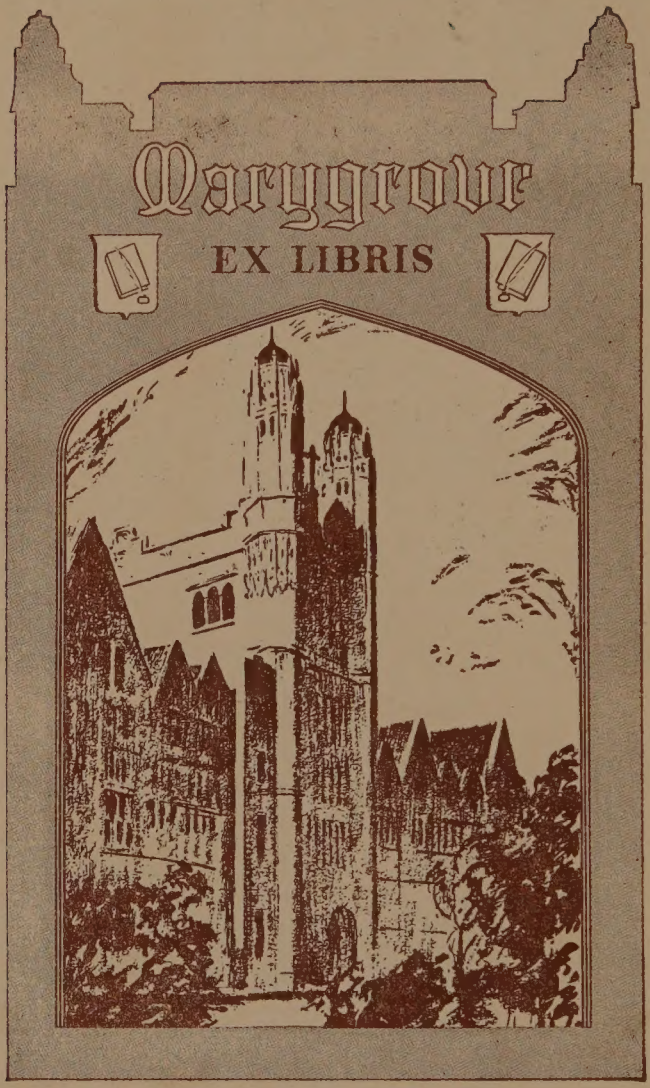
THE CHURCH AND DIVORCE

MAHON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THE CHURCH *and* DIVORCE

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INTRODUCTION

I

The question of divorce will always be of particular interest: to the Catholic, because Christ has laid down certain regulations in regard to marriage which he must obey if he is to be a true follower of his Master; to the non-Christian and to the majority of Protestants because their object will ever be to show that Christ's teaching on divorce is either obscure or that He allowed divorce in certain contingencies.

Where are we to find the teaching of Christ in regard to this much disputed question? First of all in the inspired writings themselves—the Gospels and the Epistles; and secondly, in the writings of the Fathers of the early Church.

Were we to depend on the words of Christ as recorded in the Gospels of St. Luke and St. Mark, there would not be the slightest room for doubt: they are clear and categorical. A difficulty is, however, raised as to the meaning of two statements in St. Matthew, although both these statements are equally clear and categorical. And even well meaning critics make bold to proclaim that the Evangelist's

words are obscure. Let us set down the principal passages in the New Testament which relate to marriage and divorce. We shall first give the Greek, then the Latin, and finally the English version of the passages in question.

St. Matthew V, 31–32

31. Ἐρρέθη δέ· Ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ, δότω αὐτῇ ἀποστάσιον.“

31. Dictum est autem: „Quicunque dimiserit uxorem suam, det ei libellum repudii.“

31. And it hath been said, Whosoever shall put away his wife, let him give her a bill of divorce.

32. Ἐγὼ δὲ λέγω ὑμῖν, ὅτι πᾶς ὁ ἀπολύσων τὴν γυναῖκα αὐτοῦ παρεκτὸς λόγου πορνείας, ποιεῖ αὐτὴν μοιχευθῆναι, καὶ ὃς ἐὰν ἀπολελυμένην γαμήσῃ, μοιχᾶται.

32. Ego autem dico vobis, quia omnis, qui dimiserit uxorem suam *excepta fornicationis causa*, facit eam moechari, et qui dimissam duxerit, adulterat.

32. But I say to you that whosoever shall put away his wife, *excepting for the cause of fornication*, maketh her to commit adultery: and he that shall marry her that is put away committeth adultery.

St. Matthew XIX, 3–12

3. Καὶ προσῆλθον αὐτῷ οἱ Φαρισαῖοι πειράζοντες αὐτὸν καὶ λέγοντες· Εἰ ἔξεστιν ἀνθρώπῳ ἀπολῦσαι τὴν γυναῖκα αὐτοῦ κατὰ πᾶσαν αἰτίαν;

3. Et accesserunt ad eum Pharisaei tentantes eum, et dicentes: Si licet homini dimittere uxorem suam quacunque ex causa?

3. And there came to him the Pharisees tempting him and saying: Is it lawful for a man to put away his wife for every cause?

4. Ὁ δὲ ἀποκριθεὶς εἶπεν αὐτοῖς· Οὐκ ἀνέγνωτε, ὅτι ὁ ποιήσας ἀπ' ἀρχῆς ἄρσεν καὶ θῆλυ ἐποίησεν αὐτούς.

4. Qui respondens ait eis: Non legistis, quia qui fecit hominem ab initio, masculum et feminam fecit eos et dixit:

4. Who answering, said to them: Have ye not read that he who made man from the beginning made them male and female? And he said:

5. Καὶ εἶπεν· Ἕνεκα τούτου καταλείψει ἄνθρωπος τὸν πατέρα καὶ τὴν μητέρα, καὶ κολληθήσεται τῇ γυναικὶ αὐτοῦ, καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν";

5. „Propter hoc dimittet homo patrem et matrem, et adhaerebit uxori suae, et erunt duo in carne una"?

5. *For this cause shall a man leave father and mother and shall cleave to his wife: and they two shall be in one flesh.*

6. Ὥστε οὐκέτι εἰσὶν δύο, ἀλλὰ σὰρξ μία. Ὃ οὖν ὁ θεὸς συνέζευξεν, ἄνθρωπος μὴ χωριζέτω.

6. Itaque jam non sunt duo, sed una caro. Quod ergo Deus conjunxit, homo non separet.

6. Therefore now they are not two, but one flesh. What therefore God hath joined together, let no man put asunder.

7. Λέγουσιν αὐτῷ· Τί οὖν Μωϋσῆς ἐνετείλατο δοῦναι βιβλίον ἀποστασίου καὶ ἀπολῦσαι αὐτήν;

7. Dicunt illi: Quid ergo Moyses mandavit dare libellum repudii et dimittere?

7. They say to him: Why then did Moses command to give a bill of divorce and to put away?

8. Λέγει αὐτοῖς· Ὅτι Μωϋσῆς πρὸς τὴν σκληροκαρδίαν ὑμῶν ἐπέτρεψεν ὑμῖν ἀπολῦσαι τὰς γυναῖκας ὑμῶν· ἀπ' ἀρχῆς δὲ οὐ γέγονεν οὕτως.

8. Ait illis: Quoniam Moyses ad duritiam cordis vestri permisit vobis dimittere uxores vestras; ab initio autem non fuit sic.

8. He saith to them: Because Moses by reason of the hardness of your heart permitted you to put away your wives. But from the beginning it was not so.

9. Λέγω δὲ ὑμῖν, ὅτι ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ μὴ ἐπὶ πορνείᾳ καὶ γαμήσῃ ἄλλην, μοιχᾶται, (καὶ ὁ ἀπολελυμένην γαμῶν μοιχᾶται.)

9. Dico autem vobis, quia quicunque dimiserit uxorem suam, *nisi ob fornicationem,* et aliam duxerit, moechatur, (et qui dimissam duxerit, moechatur.)

9. And I say to you that whosoever shall put away his wife, *except it be for fornication,* and shall marry another, committeth adultery: (and he that shall marry her that is put away committeth adultery.)

10. Λέγουσιν αὐτῷ οἱ μαθηταὶ αὐτοῦ· Εἰ οὕτως ἐστὶν ἡ αἰτία τοῦ ἀνθρώπου μετὰ τῆς γυναικός, οὐ συμφέρει γαμῆσαι.

10. Dicunt ei discipuli ejus: Si ita est causa hominis cum uxore, non expedit nubere.

10. His disciples say unto him: If the case of a man with his wife be so, it is not expedient to marry.

11. Ὁ δὲ εἶπεν αὐτοῖς· Οὐ πάντες χωροῦσιν τὸν λόγον τοῦτον, ἀλλ' οἷς δέδοται.

11. Qui dixit illis: Non omnes capiunt verbum istud, sed quibus datum est.

11. Who said to them: All men take not this word, but they to whom it is given.

12. Εἰσὶν γὰρ εὐνοῦχοι, οἵτινες ἐκ κοιλίας μητρὸς ἐγεννήθησαν οὕτως, καὶ εἰσὶν εὐνοῦχοι οἵτινες εὐνουχίσθησαν ὑπὸ τῶν ἀνθρώπων, καὶ εἰσὶν εὐνοῦχοι οἵτινες εὐνούχισαν ἑαυτοὺς διὰ τὴν βασιλείαν τῶν οὐρανῶν. ὁ δυνάμενος χωρεῖν χωρείτω.

12. Sunt enim eunuchi, qui de matris utero sic nati sunt, et sunt eunuchi, qui facti sunt ab hominibus, et sunt eunuchi, qui seipsos castraverunt propter regnum caelorum. Qui potest capere capiat.

12. For there are eunuchs who were born so from their mother's womb: and there are eunuchs who were made so by men: and there are eunuchs who have made themselves eunuchs for the kingdom of heaven. He that can take, let him take *it.*

St. Mark X, 2–12

2. Καὶ προσελθόντες Φαρισαῖοι ἐπηρώτων αὐτὸν, εἰ ἔξεστιν ἀνδρὶ γυναῖκα ἀπολῦσαι, πειράζοντες αὐτόν.

2. Et accedentes Pharisaei interrogabant eum: Si licet viro uxorem dimittere? tentantes eum.

2. And the Pharisees coming to him asked him, tempting him: Is it lawful for a man to put away his wife?

3. Ὁ δὲ ἀποκριθεὶς εἶπεν αὐτοῖς· Τί ὑμῖν ἐνετείλατο Μωυσῆς;

3. At ille respondens dixit eis: Quid vobis praecepit Moyses?

3. But he answering, saith to them: What did Moses command you?

4. Οἱ δὲ εἶπον· Ἐπέτρεψεν Μωυσῆς βιβλίον ἀποστασίου γρᾶψαι καὶ ἀπολῦσαι.

4. Qui dixerunt: Moyses permisit libellum repudii scribere, et dimittere.

4. Who said: Moses permitted to write a bill of divorce and to put *her* away.

5. Ὁ δὲ Ἰησοῦς εἶπεν αὐτοῖς· Πρὸς τὴν σκληροκαρδίαν ὑμῶν ἔγραψεν ὑμῖν τὴν ἐντολὴν ταύτην.

5. Quibus respondens Jesus ait: Ad duritiam cordis vestri scripsit vobis praeceptum istud;

5. To whom Jesus answering, said: Because of the hardness of your heart, he wrote you that precept.

6. Ἀπὸ δὲ ἀρχῆς κτίσεως ἄρσεν καὶ θῆλυ ἐποίησεν αὐτοὺς ὁ θεός.

6. Ab initio autem creaturae masculum et feminam fecit eos Deus.

6. But from the beginning of the creation, God made them male and female.

7. Ἕνεκεν τούτου καταλείψει ἄνθρωπος τὸν πατέρα αὐτοῦ καὶ τὴν μητέρα, καὶ προσκολληθήσεται πρὸς τὴν γυναῖκα αὐτοῦ,

7. „Propter hoc relinquet homo patrem suum et matrem, et adhaerebit ad uxorem suam,

7. For this cause, a man shall leave his father and mother and shall cleave to his wife.

8. Καὶ ἔσονται οἱ δύο εἰς σάρκα μίαν.

8. Et erunt duo in carne una. Ita-

8. And they two shall be in one flesh.

ὥστε οὐκέτι εἰσὶν δύο, ἀλλὰ μία σάρξ.

que jam non sunt duo, sed una caro.

Therefore now they are not two, but one flesh.

9. Ὃ οὖν ὁ θεὸς συνέζευξεν, ἄνθρωπος μὴ χωριζέτω.

9. Quod ergo Deus conjunxit, homo non separet.

9. What therefore God hath joined together, let not man put asunder.

10. Καὶ εἰς τὴν οἰκίαν πάλιν οἱ μαθηταὶ αὐτοῦ περὶ τοῦτου ἐπηρώτων αὐτόν.

10. Et in domo iterum discipuli ejus de eodem interrogaverunt eum.

10. And in the house again his disciples asked him concerning the same thing.

11. Καὶ λέγει αὐτοῖς· Ὃς ἂν ἀπολύσῃ τὴν γυναῖκα αὐτοῦ καὶ γαμήσῃ ἄλλην, μοιχᾶται ἐπ' αὐτήν.

11. Et ait illis: Quicunque dimiserit uxorem suam et aliam duxerit, adulterium committit super eam.

11. And he saith to them: Whosoever shall put away his wife and marry another committeth adultery against her.

12. Καὶ ἐὰν αὐτὴ ἀπολύσασα τὸν ἄνδρα αὐτῆς γαμήσῃ ἄλλον, μοιχᾶται.

12. Et si uxor dimiserit virum suum et alii nupserit, moechatur.

12. And if the wife shall put away her husband and be married to another, she committeth adultery.

St. Luke XVI, 18

18. Πᾶς ὁ ἀπολύων τὴν γυναῖκα αὐτοῦ καὶ γαμῶν ἑτέραν μοιχεύει, καὶ πᾶς ὁ ἀπολελυμένην ἀ π ὸ ἀνδρὸς γαμῶν μοιχεύει.

18. Omnis, qui dimittit uxorem suam et alteram ducit, moechatur, et qui dimissam a viro ducit, moechatur.

18. Every one that putteth away his wife and marrieth another committeth adultery: and he that marrieth her that is put away from her husband committeth adultery.

St. Paul, 1 Corinthians VII, 10–11

10. Τοῖς δὲ γεγαμηκόσιν παραγγέλλω, οὐκ ἐγὼ ἀλλ' ὁ κύριος, γυναῖκα ἀπὸ ἀνδρὸς μὴ χωρισθῆναι,	10. Iis autem, qui matrimonio juncti sunt, praecipio, non ego sed Dominus, uxorem a viro non discedere;	10. But to them that are married, not I, but the Lord, commandeth that the wife depart not from her husband.
11. Ἐὰν δὲ καὶ χωρισθῇ, μενέτω ἄγαμος ἢ τῷ ἀνδρὶ καταλλαγήτω. καὶ ἄνδρα γυναῖκα μὴ ἀφιέναι.	11. Quod si discesserit, manere innuptam, aut viro suo reconciliari. Et vir uxorem non dimittat.	11. And if she depart, that she remain unmarried or be reconciled to her husband. And let not the husband put away his wife.

II

Now in regard to the meaning of the statements of St. Mark and St. Luke there can be no doubt. Neither would St. Matthew's version be in any way ambiguous, were it not that critics assume, *a priori*, that the pronouncements of our Lord in Matt. V and XIX, as well as those in Mark, Luke, and Paul, all convey the same general meaning, *viz.*, that "every one that putteth away his wife and marrieth another, committeth adultery, and he that marrieth her that is put away committeth adultery" (Luke XVI, 18). This is where we differ from the critics, as will be seen from the pages which follow. Our position in brief is: (1) the statements of our Lord as recorded in St. Matthew do not convey the same meaning as those contained in the two other Evan-

gelists and in St. Paul; (2) the statement in Matt. V, 31–32, defines the relations between the husband and the wife he has put away: he makes her to commit adultery if he puts her away on any other charge than that of fornication: and the man who marries such a wife is guilty of adultery. On the other hand in Matt. XIX, 1–9, the question at issue is the freedom to remarry of the man who has dismissed his wife on some other charge than that of fornication. Such a man may not marry again under pain of committing adultery.

From this statement of the question it will at once be seen that St. Matthew has not a single word to say as to the freedom of the man to marry another woman after having put away his wife for adultery. By implication we may gather from Chapter V that such a man is *not* free to marry during the lifetime of his consort. This is not, however, the question at issue. The precise point that is emphasised is that the woman, who, according to the law of Deuteronomy, was free to remarry after she had received a bill of divorce, is no longer free to do so under the new law of Christ—and this even though her husband is justified in putting her away for adultery, the most grievous crime against marital fidelity. In the same way it will be seen that in Matt. XIX, 9, our Lord is merely replying to a particular question put to Him by the Pharisees. If we wish to know what His full views on divorce are, we shall have to

supplement St. Matthew's narrative by that given in the Gospel of St. Mark.

Another point we should like to stress is that modern critics are not alone in interpreting the passages in Chapters V and XIX of St. Matthew as referring to the same set of circumstances. Even many of the early writers, including St. Jerome, made this mistake. The result was that because there was an exceptive clause in Matt. V, 32 ("παρεκτὸς λόγου πορνείας," except for the cause of fornication), so the "μὴ ἐπὶ πορνείᾳ" of Chapter XIX was given an exceptive meaning also, instead of translating it—"not doing it for fornication," the phrase was rendered by the Latin *"nisi ob fornicationem,"* "except it be for fornication." This reasoning is reinforced by the consideration that many of the early scribes, thinking that the passages in Chapter V and XIX had the same original setting, wrongly inserted the latter portion of V, 32 in Chap. XIX, 9: "and he that shall marry her that is put away, committeth adultery." [1]

III

It may, perhaps, be said with some show of reason that enough has been written on the text of these passages. The greatest scholars have failed to bridge the chasm; why should we hope for success where they failed? While admitting the reasonable-

[1] The best MSS. omit this phrase, e. g., Aleph. D. L. S.

ness of such an objection, we have still to say that it is better to try to grapple with the text and to give it a reasonable translation, than to appeal directly to history for a vindication of the Catholic position on the question of divorce. Such a procedure would leave us open to attack from the Modernists or Rationalists. They are convinced that this "extreme" doctrine of indissoluble marriage has its roots in the asceticism of the early Christians—an asceticism which increased with the growth of monasticism in the Church.

For Catholics the whole position is clear: an infallible guide points out the road to be followed. Yet this does not make them one whit less assiduous in textual research. They only desire to get back to the true text, for the true will surely vindicate the truth, and who has the truth if not they to whom Christ has promised the abiding presence of the Spirit of Truth?

Yet the Catholic knows that this subterfuge for divorce which non-Catholics seek in textual obscurities—more often imaginary than real—is nothing more than the challenge of the "philosophy" of this world to the "foolishness" of Christ and his Gospel. Pleasure is the universal cry. Whatever gives pleasure is useful and good, both morally and physically: whatever gives pain is injurious, is morally bad. Whatever passages of Scripture run counter to pseudo-Christian ideals, must be so re-

fined and sifted that they may not clash with the "maximum of life." That is the reason why these passages of Scripture which bear on divorce have had such a bad time of it.

The lot of the man who has put away his wife because she has committed adultery, and yet is forbidden to marry during her lifetime, is a hard one. But the true Christian knows that the Christian life is primarily and principally a warfare. "You shall lament and weep, but the world shall rejoice" (John XVI, 20). The Christian life must in some way be a replica of that of Christ if salvation is to be attained. The world has yet to realise that the road of pleasure and licence is not the road to salvation. If salvation can be worked out in any other way than by suffering and self-denial, then it was vain for Christ to have chosen the way of the cross rather than that of pleasure and magnificence.

If the following pages are somewhat technical—this is not altogether the writer's fault: the nature of the subject demands that such should be the case. We might have written more extensively, but we preferred to suggest lines along which the Catholic position on divorce might be apologetically defended, rather than to make an attempt to exhaust those lines.

At the present day it is useful and even necessary for the Catholic layman to be able to give precise reasons why he is not allowed to avail him-

self of the civil laws which favor divorce in almost every country. This is particularly the case with those of our laymen who are connected with the making of laws. To such as these we hope that the following pages may prove of service. They will see from reading them that there is one and only one reason why divorce is not permitted to Catholics, and that is—*Christ has emphatically prohibited divorce.* They will also see that St. Paul and the early Christian writers never had the slightest doubt as to the meaning of the pronouncements of their Divine Master, and that if we are to be true Christians, we must oppose divorce as something pagan and unchristian. There may be many suasory reasons against the practice of divorce, *e. g.*, that it makes for disruption of the family life, that it is an incentive to licence of all kinds, etc. But for a Catholic there is one cogent reason, and that is, *divorce has been forbidden by Christ.* Particular churches may have erred on this important question, the Church of Rome, to which we belong, has never erred. In it has been preserved that tradition which has come down from the Apostles (*"in ea conservata est quae est ab Apostolis traditio."* St. Irenaeus, *Adversus Haereses,* III, c. 2–4; Migne, *P. G.*, VII, col. 847–855).

PART I

INDISSOLUBILITY OF CHRISTIAN MARRIAGE IN SACRED SCRIPTURE

§ 1. *THE TEACHING OF ST. PAUL*

The earliest Christian documents leave no doubt that marriage between two Christians is indissoluble. The Epistles of St. Paul to the Corinthians and to the Romans, written before the year 58 A. D., show that he recognised only one factor which dissolved such a marriage,—the death of one of the parties. In 1 Cor.[1] he extols celibacy, but this gift is not given to all, and if anyone cannot contain himself, "it is better to marry than to be burnt." [2] This is St. Paul's own advice. "But to them that are married, not I but the Lord commandeth that the wife depart not from her husband, and if she depart, that she remain unmarried. And let not the husband put away his wife." [3] These words need no comment. Their force is recognised even by Protestants, who allow what they call a mitigated form of divorce

[1] 1 Cor. vii.
[2] 1 Cor. vii, 9.
[3] 1 Cor. vii, 10.

in favor of the innocent party when the other has committed adultery.[4] The only way that one of their latest Biblical scholars seeks to evade the force of the passage which prohibits remarriage after the wife has been sent away for adultery, is to hold that it is the "interpolation of an ignorant scribe." [5] And he does not regard this procedure as unscientific, although all textual evidence is against him.

Again, in the sixth chapter [6] of the same Epistle St. Paul writes: "Know you not that he who is joined to a harlot is made one body? For they shall be, saith he, two in one flesh. But he who is joined to the Lord is one spirit." St. Paul is here emphasizing the fact that such an enormous sin as fornication ill becomes the Christian, who is a member of Christ's mystical body, and elsewhere he writes that "no fornicator hath an inheritance in the Kingdom of Christ and God." [7] But he does not say a word which would imply that the marriage was dissolved because one of the parties was a fornicator.

[4] "Divorce in the New Testament," by Dr. Gore and Dr. Box (S.P.C.K., 1921), p. 50: "It is exactly this,—*viz.*, divorce and remarriage,—which he [St. Paul] regards as excluded for both wife and husband in the case of marriages contracted under the sanction of Christ."

[5] "The Teaching of the New Testament on Divorce," London, 1921, by Dr. Charles, pages 51 and 54.

[6] 1 Cor. vi, 16, 17.

[7] Ephes. v, 5.

In his Epistle to the Romans St. Paul wishes to show that Christians are no longer bound by the prescriptions of the Mosaic law; the latter has power only over the living; but the Romans, being Christians, are mystically dead through incorporation with Christ in Baptism. And so, in the seventh chapter [8] of this Epistle, St. Paul illustrates his teaching by taking an example from what was happening every day around them. In doing so he gives us an insight into what was the practice amongst the Roman Christians on the marriage issue. "For the woman," he writes, "that hath an husband, whilst her husband liveth is bound to the law," *i.e.*, she is bound by the law which renders her dependent on her husband.[9] "But if her husband be dead, she is loosed from the law of her husband. Therefore, whilst her husband liveth, she shall be called an adulteress if she be with another man, but if her husband be dead, she is delivered from the law of her husband; so that she is not an adulteress if she be with another man." From this passage we may gather that the adulterous wife is bound by the law of her husband so long as he lives; "she has not power over her own body, but the husband." The point that is emphasized here is, that during the life time of her husband the wife may not have sexual re-

[8] Romans vii, 1–4.

[9] ὁ νόμος τοῦ ἀνδρός. "The Roman wife was very specially under the power of her husband." Lagrange, *Épitre aux Romains*, p. 161.

lations with another man under pain of committing adultery.[10]

§ 2. *THE TEACHING OF ST. LUKE*

The testimony of St. Luke, the companion of St. Paul, is no less clear on the question of indissoluble marriage. He wrote his Gospel a few years [1] after St. Paul had written his Epistles, and in it he records, in his "diary" [2] of our Lord's ministry on His way to Jerusalem, some of the main doctrines of the Saviour.

St. Luke was not sure of the exact circumstances of time and place in which they were preached and so he conveniently inserts them here. He had a suspicion that our Lord's teaching on indissoluble marriage was set forth on some occasion when the Phari-

[10] Dr. Charles objects (*op. cit.*, p. 42) "that since the illustration of his great theme,—that the Christian through his fellowship in the death of Christ has died to the law,—is based wholly on the Mosaic law of marriage, it has no bearing whatever on the doctrine of divorce. It is of Christian marriage an illustration and nothing more." True, we reply, it is an illustration; but it is something more than an illustration, inasmuch as it shows us what the actual practice amongst the Roman Christians was at that time. Even though the woman committed adultery, she was bound by the law of her husband so long as she lived. "She has not power of her own body, but the husband" (cf. 1 Cor. vii, 4).

[1] About 62 A. D.

[2] This "diary" comprises Chap. ix, 51—xviii, 20; cfr. Lagrange, *L'Évangile selon Saint Luc*, p. xxxviii.

sees came to "sneer" [3] at His doctrines and to query Him on the relation of the Old to the New Law. It is not surprising, then, to find our Lord's teaching on the indissolubility of marriage occurring after the saying: "It is easier for heaven and earth to pass, than one tittle of the law to fall." "Everyone," he continues, "that putteth away his wife and marrieth another, committeth adultery; and he that marrieth her that is put away from her husband, committeth adultery." [4]

The testimony of St. Mark is equally convincing. We shall consider it in connection with St. Matthew's account of our Lord's teaching on marriage and divorce.

§ 3. *MARRIAGE IN ST. MATTHEW'S GOSPEL*

The first passage dealing with marriage in St. Matthew's Gospel occurs in the "Sermon on the Mount." [1] In this discourse our Lord defines the relation between the Old and the New Law. The New Law does not contradict the Old,—it is merely the readjustment of the Old Law, so as to place it in its true setting.[2] Only the cavilling traditions of

[3] Luke XVI, 14: "ἐξεμυκτήριζον."

[4] Luke XVI, 17–18.

[1] Matt. V–VII.

[2] Matt. V, 17; cfr. St. Thomas, Suppl., Pars III, qu. 67, art. 4, ad 3: *"Multa licita putabantur per non rectam praeceptorum*

men were to be abolished.[3] The term *murderer* must not be confined merely to the man who slew his neighbor: it was henceforth to be equally applicable to him who had evil designs on the life of his fellow man.[4] The adulterer was no longer the ravisher of another's wife: the command, "Thou shalt not commit adultery" takes cognizance also of him "who shall look on a woman to lust after her." [5]

Then our Lord goes on to speak of the relations between man and wife: "And it hath been said, Whosoever shall put away his wife, let him give her a bill of divorce. But I say to you, that whosoever shall put away his wife, excepting for the cause of fornication, maketh her to commit adultery: and he that shall marry her that is put away, committeth adultery." [6] In the twenty-fourth chapter of Deuteronomy [7] we shall find the passage to which our Lord is referring. To understand the full import of Christ's words we shall have to study this enactment more closely.

expositionem." Also 1a 2ae, qu. 108, art. 3, ad 2: *"Quaedam quae in lege Moysi erant tradita tanquam permissiones, existimabant esse per se justa, scilicet repudium uxoris . . . et ideo Dominus prohibuit uxoris repudium."*

[3] Matt. XV, 9; Mark VII, 9–13.

[4] Matt. V, 21–22.

[5] Matt. V, 27–28.

[6] Matt. V, 31–32; "ἀπολελυμένην" without the article means "anyone at all who is put away": the sense is absolute.

[7] Deut. XXIV, 1–4.

Deuteronomy XXIV, 1–4

We shall give the translation according to the Masoretic text, as it brings out the sense slightly better than the Vulgate: [8]

"When a man taketh a wife and marrieth her, then it cometh to pass, if she find no favor in his eyes because he hath found some unseemly thing in her, that he writeth her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house, and she departeth out of his house, and goeth and becometh another man's wife, and the latter husband hateth her, and writeth her a bill of divorcement, and giveth it in her hand, and sendeth her out of his house; or if the latter husband die who took her to be his wife, her former husband who sent her away may not take her again to be his wife after that she is defiled."

No matter how the original Hebrew text is translated, the general meaning is clear from the purpose of the book. Deuteronomy consists of several addresses, which are said to have been delivered by Moses to the Israelites on the eve of their entrance into the Promised Land.[9] The passage which we have under consideration occurs in the portion [10] which deals with the relations between husband and

[8] *The Holy Scriptures according to the Masoretic Text,* Philadelphia, 1917, Deut. XXIV (1–4).

[9] Cfr. Deut. I, 1–5; IV, 44–49; IX, 1; XXXI, 1 sq.

[10] Chaps. XII–XXVI.

wife. The whole trend of this section seems to be to give certain rights to the woman as against the man. She was no longer to be his chattel and plaything.[11] If her husband put her away, the recognised procedure was that he should give her a bill of divorce. Moses takes this practice for granted, but he goes farther and lays down that when the wife is put away, her first husband may not take her again to wife in the event of her dismissal by the second husband or the death of the latter.[12] This piece of legislation was aimed directly at restraining the husband's power to put away his wife and it was a further advance in the direction of giving the wife her proper rights.

The passage gave rise to a great many controversies amongst the rabbis. All were agreed that a man's duty towards his wife was fulfilled if he gave her a bill of divorce, and he was then free to marry again. But there was considerable discussion as to what should be regarded as a ground for divorce. Attention was much concentrated on this passage in Deuteronomy, and it was taken for granted that Moses had laid down a ground of divorce in the words: "the uncleanness of a thing." The Shammaites held that these words meant "adultery," while the Hillelites took them in a loose sense to

[11] Compare Exodus XX, 17, where the wife is numbered amongst the "goods" of the husband.

[12] Deut. XXIV, 4.

mean almost anything, such as the failure of the wife to cook her husband's dinner properly.[13] In short, the position can best be described by saying that the Shammaites held that a bill of divorce could be given only in "adultery cases," whereas the Hillelites held the opposite opinion, namely, that the bill of divorce could be given even for "non-adultery cases."

§ 4. *INTERPRETATION OF MATT. V AND XIX IN THE LIGHT OF DEUTER. XXIV, 1–4*

It was against the false interpretation of this passage of Deuteronomy that our Lord inveighed in the Sermon of the Mount. He thus sums up the current rabbinical teaching in his reference to the law of Deuteronomy: "It hath been said: Whosoever shall put away his wife, let him give her a bill of divorce." [1] The Jews had interpreted the Mosaic ordinance in the sense that a man's duty towards his wife is fulfilled when he has given her a bill of divorce. He was then free to marry again. Our Lord

[13] Quoted in Lagrange, *Evang. selon St. Matt.*, p. 104. Judging by the same expression in Deut. XXIII, 14 (23.17 Hebrew ed. of Kittel, 1909) the words seem from the context to mean some bodily defect causing disgust. The Hillelite interpretation of these words seems the more reasonable, especially as the adulteress was ordered to be stoned according to Chap. XXII, 21–24; cfr. *Das Deuteron.* by Steuernagel, 1923, p. 139.

[1] Matt. V, 31; cfr. St. Thomas, 1a 2ae, qu. 108, art. 3, ad. 2.

says, No; a man's duty to his wife is not thereby fulfilled; he is responsible for the adultery which his wife may commit if he dismisses her for any other reason than fornication.[2] The phrase "maketh her to commit adultery" [3] can only be understood on the supposition that the point at issue here is not the rights and liberties of the "innocent" husband whose wife has committed adultery,[4] but rather the responsibility which the husband who dismisses his wife contracts in case she afterwards becomes an adulteress. She is not an adulteress before her dismissal, otherwise the phrase "maketh her to commit adultery" would have no meaning. And lest the bond of marriage should be thought to be dissolved when the wife is put away, our Lord lays it down that he who marries the woman that is put away, commits adultery.

A more serious problem occurs in the nineteenth chapter of St. Matthew's Gospel.[5] It is more seri-

[2] Our Lord did not specify here what particular kind of fornication entitled the man to dismiss his wife. Tradition has interpreted *πορνεία* to mean adultery. The Church at the present day will never ask the husband of an adulteress to renew conjugal relations with her, or *vice versa,* if the husband is an adulterer. (Cfr. *Codex Iuris Canonici,* Can. 1130). St. Thomas, 1a 2ae, qu. 107, ad 2: *"Unde Dominus ut non facile uxor dimittatur, solam causam fornicationis excepit."* Also Suppl., 3a, qu. 67, art. 6; also St. Augustine, *De Sermone Domini in Monte,* Bk. I, Ch. 14.

[3] Matt. V, 32.

[4] V. Dr. Gore, *op. cit.,* p. 42.

[5] Matt. XIX, 1–10.

ous because the matter directly considered is the freedom of the husband to marry again after he has put away his wife. The Evangelist tells us that certain Pharisees came to our Lord and asked Him: "Is it lawful for a man to put away his wife for every cause?" [6] Their object was, not to find out the truth, but rather, as it is said, to put Christ on trial. They had most probably heard of His strict views on marriage as propounded in the Sermon on the Mount, and now attempted to involve Him in the dispute between the Hillelites and Shammaites by making Him reply with a definite yes or no to their question, which was couched in Hillelite phraseology. As was His custom, however, our Lord for the moment evaded the reply by referring them to some passage in the Old Testament, which they had obscured by their traditions. "Have you not read, that he who made man from the beginning, made them male and female. . . . For this cause shall a man leave father and mother, and shall cleave to his wife, and they two shall be in one flesh." [7] And by way of comment on this passage from Genesis, Christ adds: "Therefore now they are not two, but one flesh. What therefore God hath joined together, let no man put asunder." [8]

The original question put by the Pharisees merely

[6] Matt. XIX, 3.
[7] Matt. XIX, 4–5.
[8] Matt. XIX, 6.

concerned the grounds requisite for the dismissal of a wife. But since dismissal for the Jews meant leave to remarry, our Lord mentions that the design of the Creator at the beginning was that man and wife should not be separated at all. "Male and female he made them": [9] one was therefore the necessary complement of the other, and their marital union was to be even closer than the union between parents and children,[10] for it was a union whereby husband and wife became as one flesh.[11]

The Pharisees were not silenced by this reply. If such was the original design of the Creator, "why then," they asked, "did Moses command to give a bill of divorce, and to put away?" Christ's reply is clear and definite: "Moses by reason of the hardness of your heart permitted you to put away your wives: but from the beginning it was not so. And I say to you, that whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery." [12] This is the Vulgate translation of the text. It renders the Greek phrase μή ἐπὶ πορνείᾳ by, "except it be for fornication." We do not regard this translation as the correct one.[13]

First of all, if St. Matthew meant to use the word

[9] Matt. XIX, 4.
[10] Matt. XIX, 5.
[11] Matt. XIX, 8–9.
[12] Matt. XIX, 7.
[13] The best MSS., e. g., Aleph. D. L. S. omit the remainder of the Vulgate version.

"except" here, he would have rendered it by the ordinary particles εἰ μή or ἐάν μή.[14] He has used these particles over and over again in his Gospel [15] and in one instance, where we would expect him to have used the more familiar preposition πλήν, he nevertheless uses εἰ μή.[16] And secondly, this phrase has been rendered into Latin by other particles besides *"nisi."* [17] Anyhow μή does not mean "except," and it should not be translated by "except."

St. Augustine discusses the Latin text [18] as we

[14] εἰ μή = except: ἐάν μή = unless.

[15] Cfr. Matt. V, 20; XIV, 17; XV, 24; X, 13 and 14; XVIII, 3, 35; XXIV, 22; XXIX, 39.

[16] Matt. XIV, 17.

[17] See, *e. g.*, Soden's ed. of the New Testament in Africa at the time of St. Cyprian (1909), where μή is translated by *"praeter."* In the transl. of Tatian's *Diatessaron* from the Arabic by P. Augustine Ciasaca (p. 46) Matt. XIX, 9 is translated: *"Dico autem vobis, Quicumque dimiserit uxorem suam sine fornicatione"* &c.

[18] *"Quapropter cum legerimus in Evangelio secundum Matthaeum, Quicumque dimiserit uxorem suam nisi ob fornicationem, aut quod magis graece legitur, praeter causam fornicationis, et aliam duxerit, moechatur, non debemus continuo putare illum non moechari, qui propter causam fornicationis dimiserit et aliam duxerit; sed adhuc ambigere, donec Evangelium secundum alios evangelistas, a quibus hoc narratum est, consulamus. Quid si enim secundum Matthaeum, non quidem quod ad hanc rem pertinet, dictum est totum, sed ita pars dicta est, ut intelligeretur a parte totum, quod tanquam explanantes Marcus et Lucas ut clareret plena sententia totum dicere maluerunt? . . . Nonne secundum Marcum respondebitur nobis. . . . Quicumque dimiserit,"* &c. (Migne, *P. L.*, XL, *De Conjugiis Adulterinis*, p. 458, XI, n. 12).

have it, but he is careful to point out that *"nisi"* is a wrong translation of the Greek μή and suggests that *"praeter"* would be more correct. It is hard to see the difference between the two words *"praeter"* and *"nisi,"* but in the explanation which follows one would be inclined to interpret St. Augustine as holding that the phrase should be translated "not for fornication." And we are confirmed in this view by what St. Augustine writes in another place.[19] He divides men who put away their wives into two classes, those who put them away for fornication and those who put them away in non-fornication cases (*non causa fornicationis*). "It is with the latter class," he remarks, "that St. Matthew deals."

These are only a few instances of how much the translation of the text has varied. Another significant point about this phrase is that when various versions of the New Testament translate this passage, they use the same particles both in Chapters V and XIX.[20] This points to the conclusion that the copyists and translators of the original text all believed that the passages in Chapters V and XIX should be rendered by the same translation and because

[19] *"Quamvis enim sceleratius moechatur, qui non causa fornicationis uxore dimissa alteram ducit; quod genus adulterii commemoravit Matthaeus; tamen non solum ipse moechatur, sed, sicuti est apud Marcum: Quicumque dimiserit uxorem suam,"* &c. (Migne, *P.L.*, XL, *De Coniug. Adult.*, II, p. 476, c. IX n. 8).

[20] *E. g.*, the Latin N.T. in the time of St. Cyprian in Africa (*iam cit.*); Tatian's *Diatessaron, op. cit.*

παρεκτός [21] in Chapter V meant "except," so μή in Chapter XIX should also mean "except." They do not seem to have adverted to the fact that the point at issue in Chapter V is the husband's obligation to his dismissed wife, while in Chapter XIX it is the relation of the man who has sent away his wife to a second marriage, that is considered. Also, because of the general sameness of vocabulary and construction of this passage with the sayings in St. Mark and St. Luke,[22] they seem to have taken it for granted that these words were addressed to the disciples, and that consequently the conversation with the Pharisees ended with the words: "But from the beginning it was not so." [23] But this interpretation

[21] This word occurs in the Old Testament, Deut. I, 36, and also in the New Testament; ἐκτός certainly means "except" in classical Greek and παρεκτός would seem to be a strong form of this preposition. Παρεκτός in Acts XXVI, 29 certainly means "except" or "except for" and λόγος (cfr. λόγου πορνείας), judging by Acts XIX, 38, would mean, "the case of," "the accusation of" (cfr. Lagrange, St. Matt., p. 105). In 2 Cor. XI, 28, παρεκτός is used as an adverb and means "besides." But here it is certainly a preposition and, like ἐκτός, governs the genitive case, λόγου πορνείας. Therefore we translate it by "except for the case of fornication." We cannot agree with Estius (in 2 Cor. 28, p. 183) when he takes παρεκτός as an adverb and translates this passage: *"Praeter aut extra causam fornicationis."* If this were so, how explain the genitive case of λόγος here? Thus Estius: *"Nam Graecum adverbium παρεκτός ex praeter et extra compositum utriusque significationem participat. Unde et locus Matthaei percommode verti potest: extra causam fornicationis."*

[22] Mark X, 11; Luke XVI, 18.

[23] Matt. XIX, 8.

does violence to the construction of the passage, as it has come down to us.[24]

If I had been asked to translate verses 9 and 10 of the 19th chapter of St. Matthew's Gospel when Xenophon and Thucydides formed part of my evening task and the Maynooth Catechism the burden of my theological lore, I am inclined to think I would thus translate them,—bearing in mind that μή is simply a negative particle meaning not: "I say to you that whosoever putteth away his wife not on the score of fornication and marrieth another, committeth adultery."

If this is the correct translation, we have here a direct reply of our Lord to the first question put him by the Pharisees. This will be the more evident if we recall to mind the position of the Shammaites and Hillelites as to the grounds requisite for divorce. The Shammaites interpreted *ervath dabar* to mean a grave sin of fornication, and they specified this sin as adultery.[25] The Hillelites, who held the opposite

[24] Leo XIII in his encyclical letter *"Arcanum"* seems to favor the view that these words were spoken to the Pharisees; cfr. Cavallera, *Thesaurus Doct. Catholicae,* p. 668, n. 1334.

[25] The Shammaite position might be summed up by saying that they allowed divorce "on the score of fornication" (ἐπὶ πορνείᾳ); ἐπὶ with the dative case has the sense of "on the score of" (cfr. *Theory of Advanced Greek Prose Composition* by John Donovan, S.J., Oxford, 1922, Vol. II, p. 223), *e. g.,* "Pythagoras himself was beloved on this score" (ἐπὶ τούτῳ). The Hillelites, who were the opposing school, denied this and allowed divorce μὴ ἐπὶ πορνείᾳ, "not for fornication" or "in non-fornication cases." The particle μή before a noun, or an adjective used as a noun, has the

view, extended the meaning of *ervath dabar* so far as to comprise even cases that were not fornication cases—in fact *ervath dabar* was extended to mean any kind of dislike between husband and wife.[26] We can see at once, then, that the original question which was put to our Lord concerned the morality of the Hillelite position, and He replied to it by equivocating the phrase κατὰ πάσαν αἰτίαν with μὴ ἐπὶ πορνείᾳ[27] and He did so because He understood this first question of the Pharisees to refer to cases that were not fornication cases.[28] The position of the

effect, as Sidgwick (*Greek Prose Comp.*, p. 67 and 69) tells us, of negativing the conception of that noun or adjective and of thus giving it a generic sense. Thus, "those that are not ill" he translates as οἱ μὴ νοσοῦντες, *i. e.*, "the class of not diseased persons." And so μὴ ἐπὶ πορνείᾳ might be translated, "not on the score of fornication," or, better still, in the generic sense, "not for fornication cases." And so τὰ ὄντα = existing things and τὰ μὴ ὄντα = non-existing things. (Cfr. also Grimm-Thayer, *Dict. of N. T. Greek*, under "μή."

[26] Quoted by Lagrange, St. Matt., p. 104, from the Guittin Talmud, IX, 11.

[27] St. Thomas, Suppl., Pars 3, qu. 67, art. 6, says, "*odium*" was the approximate ground for separation and the causes that led up to *odium* were the remote grounds in the Old Testament. Cfr. Josephus, *Antiquities of the Jews*, Bk. IV, Ch. 8 (23): "He who desires to be divorced from his wife for *any cause whatever* (and many such causes happen among men) let him in writing give assurance that he will never use her as his wife any more, etc."

[28] Matt. XIX, 9. This is one opinion given by Cardinal Bellarmine, *De Controversiis*, Bk. IV, Chap. 16, *De Matrimonio*: "*Utrum autem liceat dimittere fornicariam quoad vinculum et aliam ducere Dominus tunc aperte dicere noluit . . . ex iis quae*

man who dismissed his wife *for other reasons than fornication,* is here outlined. He is not free to marry again under pain of committing adultery. Our Lord then, had not been asked whether the husband of an adulterous wife could dismiss her, as there was no legal difficulty about the adulteress: she was to be stoned,[29] and his reply does not deal with such an eventuality. In order to understand the rather abrupt appearance of the disciples on the scene, and their surprise at the rigidity of our Lord's doctrine, we will have to supplement what St. Matthew here tells us by reference to the Gospel of St. Mark. St. Mark is always careful to note details of place and time,[30] although with the general Pharisaic discourse here he merely gives us a rough summary [31] as the exact order of events and the terminology of the questions would be of no practical interest to his Gentile readers [32] and would not be clearly understood by them. He tells us that after the discussion with the Pharisees, Jesus and his disciples went into a house and there asked Him about "the same

Dominus dixerat de prima origine instituti Matrimonii facile poterat hoc etiam intelligi."

[29] Cfr. Deut. XXII, 21, 24.

[30] Compare, *e. g.,* Matt. XV, 12–20, with Mark VII, 17–23; also Mark III, 20.

[31] Compare Mark X, 1–9, with Matt. XIX, 1–9.

[32] The Roman Christian community, which was chiefly composed of Gentiles.

thing." [33] His reply to the Pharisees had only embraced the case of those who put away their wives for trivial reasons, and the disciples were anxious to find out the Master's attitude toward the question of putting away and remarriage. Here, with his own, there was no cavilling, for to them was "given to know the mysteries of the kingdom of God." [34] And so He proclaims to them in unmistakable words the doctrine of the indissolubility of marriage: "Whosoever shall put away his wife and marry another, committeth adultery against her. And if the wife shall put away her husband, and be married to another, she committeth adultery." [35] The doctrine was a severe one. No wonder the disciples exclaimed: "If the case of a man with his wife be so, it is not expedient to marry." [36] The "hardness of heart" which compelled Moses to overlook the practice of divorce with the right to remarriage,—this hardness would be no longer excused in the New

[33] Mark X, 10.

[34] Matt. XIII, 13; Luke VIII, 10; Mark IV, 11.

[35] Mark X, 11 and 12. Notice the words "against her" (ἐπ' αὐτήν). St. Mark is careful to record these words. They were of special significance for his Gentile readers, so recently converted from paganism. The woman had no rights according to pagan philosophy. Here the husband violates her rights if he marries another while she lives. This phrase would seem to be aimed also against polygamy. There is moreover a possible reference to the Jewish concept of adultery, which took cognizance only of the violation of the husband's rights.

[36] Matt. XIX, 10.

Kingdom, where "all shall be taught of God" [37] and "where the true adorers shall worship the Father in spirit and in truth." [38]

An old Latin version of the Scripture,[39] dated 1587 and translated from original sources by Junius, then professor of Scripture in Leyden University, renders Matt. XIX, 9 thus: *"Dico autem vobis, quod qui deserit uxorem suam, quae adulterium non commisit, et accipit aliam, adulterium committit, et qui accepit desertam, committit adulterium."* In a side note it is added: *"Sic optime interpretantur haec verba* μή ἐπὶ πορνείᾳ; *nam aliae interpretationes sic habent, ut si legeretur* εἰ μή ἐπὶ πορνείᾳ. This translation gives the sense of the passage most clearly and concisely.

[37] John VI, 45; cfr. Isaias LIV, 13.

[38] John IV, 23.

[39] See the *Encyclopaedia Brittanica, s. v.* "Junius," for an account of this translation and its author.

PART II

INDISSOLUBILITY OF CHRISTIAN MARRIAGE IN TRADITION

Even Protestants agree that Christian marriage was regarded as indissoluble during the first three centuries of the Christian era.[1]

The Shepherd of Hermas (150),[2] Athenagoras (177),[3] Justin Martyr (176),[4] St. Theophilus of Antioch (180),[5] Clement of Alexandria (217),[6] Tertullian (246),[7] and St. Cyprian[8] (258) can all be cited in favor of the indissolubility of marriage.

Saint Theophilus quotes the exceptive clause "παρεκτὸς λόγου πορνείας," but he understands it as

[1] Cfr. Dr. Box in *Divorce in the New Testament*, 1921, p. 47: "As far as I can discover, the earliest commentators understood the limiting clause to justify the separation of husband and wife in one special case, *viz.*: the proved adultery of the wife: but in any case remarriage on either side was forbidden."

[2] Mandate IV, Chap. I.

[3] Migne, *P. G.*, VI, p. 965.

[4] *P. G.*, VI, p. 349; *Apol.* I, 15.

[5] *P. G.*, VI; *Ad Autol.*, III, 13.

[6] *P. G.*, VIII, p. 1096; *Stromata*, II, 23.

[7] *De Monogamia*, c. 9, p. 38 sq.

[8] *P. L.*, IV, p. 304.

referring to the ground for the dismissal of the wife, exactly as in Matthew V, 32.

Another famous writer of this period, Origen (230), is often quoted against "indissolubility," but without sufficient reason. He merely excuses [9] certain bishops for having allowed the husbands of adulterous wives to marry again after having repudiated their wives. *Post factum* he excuses these bishops, although they acted *"contra id quod scriptum est."* They were induced to act against their own better judgment, *"alieno arbitrio morem gerentes eos permisisse verisimile est."* Origen seems inclined to excuse them because greater evils might follow if they acted otherwise.

Origen is here evidently at a loss to know why the Lord said that a man makes his wife commit fornication by dismissing her, since there are several other ways open to him if he wishes to induce her to commit this sin; also why fornication was laid down as a ground for dismissal, and how it is that Christ did not say here: "Let no one dismiss his wife *'excepta fornicationis causa.'"* This difficulty in Matt. V must seem insoluble to everyone as well as to Origen, unless account is taken of the Deuteronomic enactment to which it refers. Origen is of opinion that Moses gave unlimited licence to the husband to put away his wife, whereas our Lord allowed the husband this liberty only when the wife had

[9] *In Mattheum,* XIX, 9 (ed. Maurina).

committed adultery, but in this latter case the separation is not entire, as the parties are not free to remarry.[10]

§ 1. *DIVORCE UNDER THE ROMAN EMPERORS*

Constantine (312) and Justin II (565)

With the conversion of Constantine to Christianity, in 311, a new era opened for the Church. Catholicism, from being the religion of outlaws, became the religion of the State. Pagans were converted in thousands,—many of them more through imitating the Emperor and his court than through conviction. Pagan ideals were bound to prevail to a large extent, especially in regard to such a question of everyday importance as marriage. It is interesting, therefore, to recall what the prevailing Roman notions on marriage were.

The old principle of Roman law was, *"nuptias consensus, non carnis copulatio fecit."*[1] And just as marriage was brought about by the consent of the parties concerned, so it could be broken by their mutual consent. No civil process was required, as nowadays. If one of the parties desired a divorce, he could declare his intention before seven wit-

[10] *Op. cit.*, p. 649.

[1] Quoted from Chelodi, *Ius matrimoniale*, p. 116.

nesses,[2] and then he was free to remarry. Divorce only came within the competence of the law courts when one of the parties was guilty of a crime: then a decree was given to the effect that the innocent party was free to remarry and that the guilty party was to receive certain punishments.

After Constantine's accession to power this state of things remained unchanged. He did not abolish divorce by mutual consent, and in his positive enactments he allowed a man to remarry when his wife was guilty of adultery, acted as a procuress, or prepared poison.[3] The wife could not remarry unless her husband was guilty of murder, prepared poison, or profaned the tombs of the dead.[4] She could remarry if her husband was absent for four years.[5] By the other emperors for the next two hundred and fifty years the grounds for divorce were either extended or restricted, according to whim and fancy. It is noteworthy that Justinian, who in 542 [6] abolished divorce by mutual consent, gave even greater freedom in this direction than either Constantine or Theodosius II.[7] Undue familiarity

[2] Quoted from Chelodi, *Ius Matrimoniale.*

[3] Theodosian Code, L. I, 3, 16, quoted in Fahrner, *Geschichte des Unauflöslichkeitsprinzips und der vollkommenen Scheidung der Ehe,* p. 27.

[4] Theodosian Code, L. 7, 5, 17; Fahrner, *op. cit.,* p. 27.

[5] Theodosian Code, L. 7, 5, 17; Fahrner, *op. cit.,* p. 27.

[6] Novellum, 117, c. 8; Fahrner, *op. cit.,* p. 28.

[7] Under Theodosius II, in 449, the grounds for divorce were extended both for husband and wife. Rape, robbery, high treason,

of the wife with other men gave her husband freedom to marry another woman. Yet even the prohibition of Justinian against divorce by mutual consent was swept away by Justin II, in 566.[8]

What we have to notice all through this period is that there were State laws as well as Church laws concerning marriage. And although Constantine raised the bishop's court to the rank of a civil court, it does not seem probable that the bishops could decide cases of divorce *in foro civili*, first, because divorce came within the competence of the court only indirectly, as we have said, and secondly, because separation for motives unspecified by law was a penal offence. Now the bishops had no means of inflicting punishment such as imprisonment, exile, etc., on delinquents: they had perforce to call upon the secular arm to execute punitive sentences. Both tribunals were competent within their own spheres and both were in direct conflict so far as the principle of indissolubility was concerned. It seems the Church tacitly allowed its subjects to avail themselves of many of the liberties granted by the civil law. St. John Chrysostom[9] writes: "If you wish to take a wife, do not be influenced *merely by the civil* (ἔξωθεν) *laws*, but rather by those of the Church (τοὺς παρ' ἡμῖν κειμένους), for according to the

&c., were now included; cfr. L. 8, cod. 5, 17; Fahrner, *op. cit.*, p. 27.

[8] Novellum, 140; Fahrner, *op. cit.*, p. 29.

[9] Migne, *P. G.*, 52, 226.

latter you will be judged on the last day by God." Yet the great men of the time, such as St. Augustine, St. Jerome, St. Gregory Nazianzen, as we shall see presently, are continually reminding the people to obey God's law in regard to marriage rather than that of Cæsar. A notable enactment in this connection is the eighth canon of the second Council of Carthage (407),[10] which, after having forbidden the husband and wife who are separated to marry new consorts, asks that an imperial law be passed to the same effect. There is no record to show that the State did legislate in this direction. The Church was not yet strong enough to have its ideals on marriage put into force to the full extent. Yet, so far as she could, she gave them effect. We find, *e. g.*, such a small council as that of Vannes (465) [11] enacting that those who separated from their wives for other causes than adultery were to be excommunicated. This was in direct opposition to the practice of divorce by mutual consent, which then had the force of law in the civil courts.

§ 2. *THE GREEK CHURCH AND THE INDISSOLUBILITY OF MARRIAGE*

From the very beginning of Constantine's reign the Greek Church came more directly under the influence of the imperial court than the Latin Church,

[10] Mansi, III, p. 806.
[11] Mansi, VII, p. 953.

Although the Eastern bishops did not formally incorporate in their canons the enactments of the Emperors in regard to divorce, still they offered little resistance as a body to the imperial marriage laws.

During all this period lax views prevailed even amongst some of the greatest leaders of the Eastern Church. Asterius of Amasea (390) [1] says that death and adultery are the only things that break (διακόπεται) the marriage bond. Saint Basil of Caesarea (379) [2] in a doubtful passage seems to allow a man who has been put away by his wife to remain with the second wife he has taken. This is *post factum,* and the reason he gives is that there is an old custom which forbids the woman ever to put away the man. On the other hand, he calls the man who has sent away his wife and married another, an adulterer. Epiphanius (403) [3] is rather lax, as he seems to allow divorce with remarriage not only for πορνεία, but also for other reasons (κακὴ αἰτία.)

Yet against this general laxity we find staunch upholders of the doctrine of indissolubility. The "Apostolic Canons," [4] which belong to this period, threaten with excommunication both the man who separates from his wife and him who marries a woman who has been sent away. St. John Chrysostom declares categorically in favor of indissolu-

[1] *P. G.,* 40, 227.
[2] *Ep. 188 ad Amphiloch.* (ed. Maurina, ad can. IX).
[3] *P. G.,* 41, p. 1024.
[4] Can. 48 (Hefele, Vol. I, p. 632).

ble marriage.[5] Even though a man has the most intolerable of wives, he must remain in her bondage. In his work *De Libello Repudii*[6] he states that the adulterous wife who has been dismissed and is married to another man, is the wife neither of the second man nor of the first.

The next important council in the Greek Church is the Council of Trullo (692.)[7] In its eighty-seventh canon it confirms the opinion of St. Basil in regard to separation and abolishes divorce by mutual consent and because of dislike, while censures are threatened on those who act contrary to these regulations. This was the first resolute stand of the Greek Church against the civil law and it struggled to maintain its independence of the civil law until the ninth century, the period of the Photian Schism.

Photius reverted to the stand taken by Justinian, and when the schism with Rome became complete, in 1054, there was no longer any hope in the Eastern Church for the doctrine of indissoluble marriage, and we find Zonaras (1120) and Balsamon (1190)[8] in their commentary on the Nomocanon of Photius practically reverting to the Justinian standpoint. And this state of affairs remains to the present day.

[5] *P. G.*, 48, 552, *De Virginitate.*

[6] *P. G.*, 51, 221.

[7] Trullo, canon 87; Mansi, XI, p. 979.

[8] Zischmann, *Das Eherecht der orientalischen Kirchen,* Vienna, 1864, p. 71 sq. (quoted by Fahrner).

§ 3. *THE LATIN CHURCH FROM CONSTANTINE TO THE END OF THE FIFTH CENTURY*

During this same period the tradition in the Latin Church in favor of indissolubility was uniform. Writers like Lactantius (310),[1] Hilary of Poitiers (366),[2] and Chromatius (407) [3] are sometimes cited as allowing a man to marry again after his wife has committed adultery. The same is often said also of the councils held during this period at Elvira (300),[4] Arles (314),[5] Angers (453),[6] and Vannes (465),[7] and the Synod of St. Patrick in Ireland (456).[8]

What is remarkable about all these writers and synods is that they allow a man to dismiss his wife

[1] *Inst.*, VI, 23, (Edinburgh Edition).

[2] Migne, *P. L.*, 9, 940.

[3] Migne, *P. L.*, 20, 251.

[4] Hefele, I, p. 130 sq. (French translation).

[5] Can. X; cfr. Hefele, Vol. I, p. 185. Migne, *P. L.*, 41, p. 1024, suggests that can. X should be read: *"De his qui coniuges suas in adulterio deprehendunt, et iidem sunt adolescentes fideles et non prohibentur nubere placuit, ut in quantum possit, consilium iis detur, ne viventibus uxoribus suis licet adulteris alias accipiant."*

[6] Mansi, VII, 901.

[7] Mansi VII, 953; this Council excommunicates (can. 2) the husband who remarries after proved adultery of the wife.

[8] Synod of St. Patrick, Mansi, VI, p. 515 sq.; also p. 521 for Canons of St. Patrick. His *Synod* has can. 19: *"Mulier Christiana, quae acceperit virum honestis nuptiis et postmodum discesserit a primo et iunxerit se adulterio, quae haec fecit excommunionis fit."*

for fornication and forbid the wife to marry again during the lifetime of her husband under pain of committing adultery. They never say definitely that the husband who has dismissed his wife is free to marry another woman during the lifetime of the adulterous wife. We may perhaps explain this fact by saying that the Church was undoubtedly against such remarriage, but on account of the opposite trend of the civil law these writers and synods did not wish to emphasize too boldly *in foro externo* that remarriage in the circumstances was not allowed. The tenth canon of the Council of Arles enforces this view. It is there said that those whose wives have been guilty of adultery and who are not forbidden (*i. e.*, by the civil law) to remarry, are to be counselled as far as possible not to take another wife. This shows that the Church took measures in her own proper sphere to secure that even the "innocent" party should not violate the law of the Gospel by remarriage. Probably if those contemplated in the canon were not "young in years" (*adolescentes fideles*), excommunication would be the penalty for violation of the Church law.[9] A synod in which St. Patrick [10] is supposed to have allowed remarriage of

[9] *V.* 9, *e. g.*, canon 24 of the same Synod of Arles or, as Mansi thinks, of another Synod of Arles held at the same time: *"Placuit, ut, quantum potest, inhibeatur viro, ne dimissa uxore vivente liceat, ut aliam ducat super eam; quicumque autem fecerit, alienus erit a catholica communione."*

[10] Cfr. Mansi, VI, p. 526, can. 26.

the "innocent" husband, has been shown to have been falsely attributed to him. Certainly if St. Patrick did allow such a practice, there are no traces of it in the period immediately succeeding him. The "Canons of St. Patrick" (*circa* 500),[11] the "Poenitentiale" of Vinniai (500),[12] and the famous collection of Irish canon law known as "Hibernensis" (*circa* 650),[13] are all clear on the point that the man whose wife has committed fornication with another man may not marry again while she is still alive. And the practice of having concubines along with the legitimate wife "was never lawful, is not now lawful, and never will be lawful." This is stronger language than St. Augustine used against the licitness of having a wife and a concubine at the same time, when the former was impotent.[14]

The really big men in the Western Church during this period were emphatically in favor of indissolubility. The struggle against the laxity of the civil law on this question must have been acute, for

[11] Mansi, VI, p. 521, can. 5: *"Si alicuius uxor fornicata fuerit cum alio viro, non adducet aliam uxorem quamdiu viva fuerit uxor prima."* It adds that "she is to be received if she does penance."

[12] Quoted in Freisen, *op. cit.*, p. 786.

[13] *Op. cit.*, ed. by Wasserschleben, p. 217, cap. 17, and cap. 12: *"Uxores nolite habere viros, quorum priores uxores vivunt. Adulterina enim sunt illa coniugia nec illam feminam quae discessit a marito suo propter repudium licet ducere vivo suo marito."*

[14] *P. L.*, 40; chap. 15 of *De Bono Coniugali*, p. 385.

the writers of this period never tire of stressing the fact that Christians must obey the law of God rather than that of Caesar; *"aliae sunt leges Caesarum, aliae Christi."* [15] St. Ambrose [16] makes it clear that not only is the law of Christ broken when a man puts away his wife and marries another, but the original design of God in creating man male and female is frustrated. As regards dismissal and remarriage man and woman are on an equal footing; what is lawful for the one, is lawful for the other, and *vice versa.* St. Jerome (420) [17] lays it down categorically that so long as the man lives, even though he be an adulterer, a sodomite, and forsaken by his wife on account of his crimes, he still remains her husband, and she may not marry another. He excuses his pupil Fabiola [18] for having remarried while her first husband was still alive, because she was ignorant of the law which forbade such action. St. Augustine (430) goes beyond his predecessors, who had established the indissolubility of marriage largely on Scriptural grounds. He emphasizes the fact that marriage is a Sacrament,[19] —not indeed in the technical sense of this word, but in the Scriptural sense of μυστήριουν, something

[15] *Ep. 77 ad Oceanum* (Migne, *P. L.*, 22, p. 691).
[16] *P. L.*, 13, 1767 and 14, 431.
[17] *P. L.*, 22, p. 562.
[18] *Epist. 77 ad Oceanum, P. L.*, 22, p. 692.
[19] St. Augustine, *De Nuptiis et Concupiscentia, P. L.*, 44, pp. 419 and 420.

hidden and sacred in the manner of a relation which arose between the Christian wife and husband because of their union in one flesh, which in turn was typified by Christ's union with His Church. As Christ will remain for ever with His Church, so should husband and wife remain united, even though no children result from their union. And if the husband departs from his wife because of her adultery, he is not free to marry again, for a *"quoddam sacramentum"* remains between him and his consort. It was this "Sacrament" that the Apostle Paul wished to commend to the faithful when he wrote: *"Viri, diligite uxores vestras sicut et Christus ecclesiam."* It cannot be said that he meant to exhort Christians to love their wives so that they might bear them children, or that they might thereby preserve their modesty, of which faith is the bond. It must be, then, because he wished that man and wife should be inseparable while they lived, that he held up this example to them. The Church is the spouse of Christ, and the faithful are members of His mystic body; when therefore they marry within the Church, their union should be as indissoluble as that of Christ with His Church. In a later work,[20] speaking of those who should be admitted to Baptism, he excludes certain classes of sinners unless they do penance. Among the number are adulterers. But in estimating the

[20] *De Fide et Operibus* (*circa* 413), Chap. 19.

gravity of their sin, allowance should be made for the circumstances of each case. A man who sends away his wife and marries another because she has been guilty of adultery, is not to be put on the same level (*aequandus*) with him who sends away his wife for other reasons. The sin of the former is pardonable because of the obscurity of the divine words as to whether the latter man is an adulterer or not. It will be seen that St. Augustine is here merely laying down a discretionary rule. It cannot be said that he himself was in doubt on the point. Later on he admits to Pollentius [21] that the question of marriage is *"obscuratissima et implicatissima"* and that even though the women who remain unmarried after separation are in the minority, it is not lawful for the wife whose husband has been sent away, to marry another man, nor for the husband who has sent away his wife, to marry another woman, no matter what kind of fornication has given rise to the separation; such action is contrary to the words of the Lord.

It is important to have the views of certain popes of this period on the question of indissolubility. Pope Innocent I (401–417), writing to Exuperius,[22] Bishop of Toulouse, says that men and women have the same right to separate in case of adultery on either side, but those who marry another consort

[21] Migne, *P. L.*, 40, p. 469, n. 31.
[22] Migne, *P. L.*, 56, p. 500.

while the first still lives, are adulterers according to the words of the Lord. To Probus [23] he writes that the partnership of a second woman, while the first was still alive (and not divorced in the case mentioned to him), could in no way be lawful. Leo I (461) in his letter to Nicetas,[24] bishop of Aquileia, says that the wife of a husband who has been taken captive is not free to marry another man. In case she forms a union with another, thinking that her husband is dead, she is to break up that union if the latter returns, and if she refuses to do so, she is to be excommunicated.

§ 4. *THE PERIOD TO CHARLEMAGNE (SIXTH TO EIGHTH CENTURY)*

The Church had hardly established her doctrine of indissoluble marriage when the barbarian invasions commenced. Rome was taken in 410, and by the end of the fifth century, the Ostrogoths, Visigoths, Lombards, etc., were in possession of territory which but yesterday was subject to the Roman eagle. Many of these barbarians had already been converted; but the fact that Christianity was preached to them in the form of Arianism, with its loose doctrines on marriage, created another difficulty for the Church. Those of them who were still pagans retained their old belief that the marriage bond could

[23] Migne, *P. L.*, 20, p. 602.
[24] Migne, *P. L.*, 14, pp. 1135 and 1138.

be as easily broken as it was made. A struggle between the laws of Church and State became inevitable. All during the storms of these centuries the Master seemed to sleep, but his Vicar on earth was watching at the helm. And when we read of councils, bishops, and monks favoring principles which were directly opposed to the divinely given doctrine of indissolubility, we can always look for guidance to Peter's successor: he never lost sight of the beacon light from Heaven. Though lax views prevailed during this early period, Gregory I, writing in 601 to Theotista,[1] sister of the Emperor of Constantinople, anathematizes those who agree with the State law in saying that marriage is dissolved by the entry into religion of one of the parties, and this view, he says, is the view of the bishops and people of the Catholic Church. Man and wife form one flesh and hence it is incongruous that one part of that flesh should pass to continence and the other remain

[1] Letter to Theotista (ed. Maur., Vol. XI, p. 1130): *"Qui talia sentiunt Christiani non sicut eos et ego et omnes Catholici episcopi atque universa ecclesia anathematizamus. Si enim dicunt religionis causa coniugia debere dissolvi secundum* [he here refers to the 22nd Novellum of Justinian] *quia etsi hoc lex humana concessit, divina lex prohibuit. Per se Veritas dicit: 'Quae Deus coniunxit, homo non separet.' Quae etiam ait: Non licet dimittere uxorem, excepta causa fornicationis. Erunt duo in carne una: . . . una eademque caro et ex parte transit in continentiam et ex parte remanet in pollutione."* Cfr. Vol. XI, p. 1137, n. 5.

in pollution, and this all the more since Christ has forbidden man to separate what God has joined together.

Unlike in the period of Constantine, the Church had now no power to decide cases *in foro civili*. At the Synod of Agda in Languedoc (506) [2] we find that those who dismiss their wives for slight reasons so as to marry again are to be excommunicated, unless they previously bring the case before the provincial bishops. Although this synod was only territorial, still it is important, as it shows that the Church was striving all this time to assert her right to try marriage cases as against the usurpations of the civil law, and this canon is frequently cited afterwards as a justification for the demand of the Church to have sole competence in marriage cases. The Synod of Orleans (533) [3] excommunicated parties who dissolved marriage by mutual consent because one of them had been struck with some infirmity.

The numerous councils of the second half of the sixth and those of the early seventh century do not lay down any regulations concerning divorce. The practice of a great majority of the clergy and laity was out of harmony with Christian principles. It was useless to lay down new regulations, and the

[2] Mansi, Vol. VIII, p. 329.
[3] Mansi, VIII, p. 837.

decisions of the early councils and Fathers were frequently cited.[4] As a result of this retrospection numerous books were issued bearing the names of the most renowned doctors of antiquity. By this means it was thought that people would more readily accept the doctrines contained in these books: and thus it was that the "Libri Poenitentiales," which gave an aspect of legality to things which were really illegal, arose at this period.

In the second half of the seventh century it is interesting to note that the Council of Hereford in England (673)[5] lays it down that the man may expel his wife for fornication, but is to remain unmarried himself or else be reconciled to his wife. Bishop Theodore of Canterbury, who presided over this assembly, had made his early studies in Rome and was sent to Canterbury by Pope Vitalian. No doubt, then, this canon represented the Roman teaching on separation and remarriage. In 681 another council at Toledo excommunicated those who expelled their wives, except for fornication.

The giant labors of Bishop Boniface, Papal Legate to France and Germany, to restore ec-

[4] Cfr. the *Historia Francorum* of Gregory of Tours; Migne, *P. L.*, Vol. 71.

[5] Mansi, XI, p. 130, canon X: "The man may expel his wife for fornication, but he must remain unmarried if he wishes to remain a Christian." Cfr. the Council of Toledo, Mansi, XI, p. 1034, can. 8, which excommunicates all who dismiss their wives, except for fornication.

clesiastical discipline in these quarters in the early portion of the eighth century, are worthy of note. And with the coming into power of Pepin in France (740) and his amicable relations with the Holy See from the beginning of his reign, a brighter day dawned for Christianity. Pepin presided at the Synod of Soissons (744) [6] and in the introduction to the canons of this synod he reviewed the sad state of the Church, and resolved that, if God spared him long enough, he would bring the practices of his subjects into harmony with the ancient laws of the Church. In the ninth canon of this synod it is enacted that neither husband nor wife may remarry during the lifetime of each other, and that the husband may not dismiss his wife, except she be taken in fornication. That Pepin might be the better equipped to carry out his reform, the Pope a few years later sent him a copy of the canon laws as collected by Dionysius.[7] The reform was to be gradual, however, and so we are not surprised to find the Synods of Compiègne (757) [8] and Verberie (758) [9] enacting measures which were in opposition to the law of the Church. Two papal legates presided at Compiègne—Gregory and John. To

[6] *Monumenta Germaniae Historica, Leges,* pp. 28 sq.

[7] A. D. 747. *Vide* Verneuill, 755, *M. G., Leg.,* sect. II, p. 33: "As it is not possible to bring all into line with Church law, he wishes at least to change what is very much opposed to it."

[8] *M. Germ. Hist., Leges,* I, pp. 27 sq.

[9] *M. Germ. Hist., Leges,* I, p. 22 sq.

some of the canons there is appended the phrase, *"Gregorius consensit,"* [10] and to one of the canons of Verberie,[11] which gives leave to remarry to a wife whose husband had sexual intercourse with her cousin, there is added: *"hoc ecclesia non recipit."* These facts would lead us to believe that the dispositions of these two councils were a kind of compromise between the laws of the Church and those of the State in regard to divorce. Summing up the canons of both, we may say that divorce with right to remarry was allowed for adultery, for the religious profession of one of the parties with the other's consent, for leprosy, and for the forced exile of the husband when the wife refused to follow him. The other causes for which the bond may be broken may be explained away on the ground that the marriage was null from the beginning or was not consummated. These councils had great influence on the canonical and penitential collections of their own time and on those of the succeeding centuries, and were a serious hindrance to the enforcement of the strict law of indissolubility. In general the Penitentials made adultery a ground for divorce and remarriage even for the guilty party.

Before passing on to the period of Charlemagne, the reply of Pope Stephen II [12] to some question put

[10] *E. g.*, Canons 16 and 20.

[11] *M. G. Hist.*, p. 40, canon 18.

[12] A. D. 754 (Mansi, XII, p. 559 sq.); he quotes the letter of Pope Innocent I to Exuperius.

him while he was in a monastery of British monks in France, is worth noting: "The evangelical and apostolic discipline commands that neither the man who has been dismissed by his wife, nor the wife who has been dismissed by her husband, marry another; they are to remain in this state or be reconciled, and if they despise this law, they are to be made to do penance." This reply is interesting, as in the same document it is recounted that this Pope allowed separation for fornication.

§ 5. *CHARLEMAGNE TO GRATIAN (768–1150)*

In 768 Charlemagne succeeded his father Pepin. Like the latter, his friendly dispositions to the Holy See were evident from the beginning of his reign. He allied himself with Pope Hadrian I in his struggle against Desiderius, the Lombard king, and later on with Leo III against Paschal and Campulus. In 800 he was crowned Emperor by the Pope, and the Holy Roman Empire was founded. In his *"Admonitio Generalis"* (789) [1] he recognized the canon law as having force throughout his kingdom, and in this document we find the 102nd canon of the second Council of Mileve [2] reappearing. It states

[1] *Mon. Germ. Historica, Leges,* II (1), p. 56, can. 43: *"Item in eadem (i. e., synodo Africana) nec uxor a viro dimissa alium accipiat virum vivente viro suo nec vir aliam accipiat vivente uxore priore."*

[2] Mansi, III, p. 806.

absolutely that the husband cannot marry during the lifetime of his wife, nor the wife during the lifetime of her husband. At the Synod of Friaul (796) [3] it was enacted, following the text of St. Matthew's Gospel, that husband and wife, even when separated for adultery, cannot remarry, and the guilty wife is forbidden remarriage even after her husband is dead. This, the council says, is the opinion of St. Jerome, and the phrase *"nisi ob fornicationem"* refers only to the grounds for dismissal. Though this was only a local synod held in Italy, it is important, as its object was to put the teaching of the ancient Church clearly before those who doubted about certain matters.

Another Capitulary (802) [4] insisted on the observance of the 102nd canon of Mileve.

At Rome, in 826,[5] a synod prescribed that no one could have two wives or a wife and a concubine at the same time, and the union of Christ with His Church is quoted as an example for the married pair. Again, in 829, a Synod of Paris,[6] which, as regards importance and numbers, was a national council, enacted that the innocent party cannot remarry while the other lives, even though the other (the wife) is a fornicator. If he does marry, he is

[3] Mansi, XIII, p. 849.
[4] *M. G. Historica, Leges* (103), II (1), can. 22.
[5] Mansi, XIV, p. 1009.
[6] Mansi, XIV, p. 596.

guilty of adultery. Also the wife is not to be put away except for fornication. This is largely of the same tenor as the third canon of Worms,[7] (same year), except that here it was ordered that contumacy against the law should be brought to the notice of the king. The Synod of Aix-la-Chapelle (862)[8] is noteworthy because it was convoked to consider whether King Lothair II was free to divorce[9] his wife Theutberga because she had been guilty of incest before her marriage. The bishops of the Council were under royal pressure and, relying on the alleged "Commentary" of St. Ambrose[10] on the Epistle to the Corinthians, they decided that the King was free to put away his wife and to marry his concubine. Against this decision the Queen appealed to the Pope and he designated Metz, which was outside Lothair's territory, as the meeting place of a new council appointed to reconsider the question. Again Lothair, through two of his archbishops, Gouthier and Theutgaud, brought so much pressure to bear on the bishops that a second deci-

[7] *Mon. Ger. Hist., Leges,* sect. I, p. 345.

[8] Mansi, XV, p. 611, Canons 8 and 10: *"Si viro licet uxorem ducere, si dimiserit uxorem peccantem?"*

[9] Cfr. Hincmar, *"De Divortio Lotharii Regis et Teutbergae Reginae,"* works of Hincmar, Paris, ed. 1645, p. 561.

[10] Ambrosiaster; see Pallavicini's *History of the Council of Trent,* Vol. III, p. 432 for a discussion of the authenticity of Ambrosiaster's Commentary; also Maldonatus on Matt. XIX, 9 has a discussion on it.

sion was given in favor of the King. But Pope Nicholas,[11] perceiving the King's intrigue, suspended the two archbishops and forbade the king to marry Waldrada even after Queen Theutberga's death.

It is instructive to read the discussion of the two bishops whom the Council of Aix-la-Chapelle appointed to consider the Scriptural grounds for divorce and remarriage. It is practically identical with the discussion which was held on the same matter before the formulation of the canon on remarriage at the Council of Trent, seven centuries later. The Scriptural discussion is concluded by reference to the opinions of St. Augustine and St. Jerome; and the "two bishops" draw the general conclusion that fornication on the part of the wife after marriage does not break the marriage bond, and hence the husband is not free to remarry while she lives; [12] and finally they remark, if every sin committed before marriage were to dissolve the bond, then few marriages would stand. The Council of Tribur (895) [13] takes cognizance of the fact that, although the civil law allowed the adulteress to be slain by her husband before she took refuge in a church, the

[11] Migne, 119, p. 869, letter 13.

[12] Mansi, XV, p. 615; cfr. Hincmar, *op. cit.*, Vol. I, p. 690: *"Si dimiserit vir adulteram mulierem et eam non vult recipere, nec post poenitentiam, custodiat continentiam."* Also p. 580: *"Si dimiserit fornicariam uxorem vivente illa, non potest aliam ducere."*

[13] Hefele, Vol. VI, p. 127.

husband is not allowed to remarry in case she escapes death.

These councils of the Carlovingian period certainly obliterated the influence of the councils of Compiègne and Verberie. The "Penitentials" also suffered a severe blow during this period. The Council of Chalons (813) [14] repudiated them in strong terms: "They are of spurious authorship, but of undoubted error; they impose light penances for the gravest crimes and destroy souls instead of saving them." The Synod of Paris (829) [15] ordered the bishop of each diocese to see to it that his priests were not deceived by the errors contained in these books: on his visitation he was to collect them and consign them to the fire.

After these proclamations new "Penitentials" were drawn up, the majority of which steered a middle course between rigorism and laxness. Some, like the Penitential of Benedict Levita [16] and that of Pseudo-Isidore, [17] held out for the indissolubility of marriage. A notable example of these "Penitentials" or "Canonical Collections" is that of Regino (about 890),[18] which represents the strict view.

[14] See Labbe's Collection of the Councils, Tom. 9, p. 367, can. 38.

[15] Cfr. *supra*, Mansi, *pag. cit.*

[16] Quoted in Freisen, *Geschichte des Kanonischen Eherechts*, p. 793.

[17] Works ed. by Hinschius, 1863.

[18] Paris ed., 1671, Lib. II, can. 131. He says here that the husband of an adulterous wife *"nullatenus aliam accipiat illa*

Yet side by side with canons which uphold indissolubility, others are quoted from the Councils of Compiègne and Verberie, which justify a man in marrying again during the lifetime of his wife. The reason of this perhaps is that Regino's collection is meant to be a practical guide for the ecclesiastical judge, so that where the strict views of the Church could not be enforced in particular cases, he might fall back on the decisions of these councils. Although the ecclesiastical and civil tribunals supplemented each other during this period,—the civil trying the guilty parties and the ecclesiastical passing sentence,—yet, judging by what Regino tells us,[19] the ecclesiastical court had exclusive power over marriage when he wrote.

The principle of indissolubility was then supreme by the end of the Carlovingian age, and it was only a matter of time until the Church was able to bring practice into conformity with principle.

During the latter portion of the 10th century and

vivente." Yet in the same book, can. 124 and 127, he says that a man who leaves his country through necessity, if his wife refuses to follow him, can remarry on the condition that he does penance. He is quoting here from the Councils of Verberie and Compiègne.

[19] Cfr. Lib. II, p. 207, n. 21, where the bishop on his visitation is told to enquire into certain abuses and to find out under oath if these abuses exist. One of these mentioned in n. 21 is where the husband forsakes his wife without the consent of the bishop. This shows that the permission of the civil tribunal was not sufficient, "*si aliquis suam coniugem, quamvis culpabilem, sine episcopi iudicio relinquit.*"

at the beginning of the 11th, no great advance was made in the matter of divorce legislation. Rival claimants for the papacy asserted themselves, owing chiefly to the influence of the German sovereigns. Yet the question of divorce was a practical one at this time, as the Crusaders, after their return from the Holy Land, often found that their wives had formed alliances with other men during their absence. With Leo IX (1049–54), the first of the reforming Popes, abuses were not lost sight of. In a synod which was held under his presidency at Rheims (1049) [20] men were forbidden to dismiss their wives to marry other women. This was an echo of the thirteenth canon of an earlier council (Bourges, 1031).[21] The Council of Tours (1060) [22] excommunicated the man who sent away his wife without having put the case before the bishop; and in 1072 the Council of Rouen [23] expressly forbade remarriage in case of adultery or entry into religion of one of the parties, etc. At this time (1070) Lanfranc,[24] who had received his early training at Bologna and was afterwards archbishop of Canterbury, writing to the bishop of York, who had asked him some questions concerning those who remarried after having left their wives for adultery, says that

[20] Mansi, 19, p. 742.
[21] Mansi, 19, p. 505.
[22] Mansi, 19, p. 928.
[23] Mansi, 20, p. 38.
[24] Migne, *P. L.*, 150, p. 518.

the words of Christ (Luke XVI, 18 and Mark X, 11) show *"luce clarius"* that a new union is forbidden during the lifetime of the guilty party and that his own testimony was but a "feeble light" as compared with that which the "sun" of several of the Fathers of the Church had thrown on the matter.

As a result of the reform begun at Rome, new canonical collections [25] were issued, all of which agree that marriage is not dissolved for adultery, but even the innocent party is not free to remarry in such a case. Peter Damian,[26] a zealous reformer of this period, made a violent attack on the penitential books and even on the canonical collection of Burchard, which was regarded as a text-book at this time. This was not surprising, as Burchard,[27] in imitation of his predecessors, had some insertions from Verberie, allowing the husband to remarry if the wife had committed incest, etc. Ives of Chartres (1115),[28] taking for granted the teaching that marriage was indissoluble, went on to enquire when the contract became indissoluble, and, in opposition to Hincmar (882),[29] held that it was indissoluble from the moment the mutual consent was given, and not

[25] *E. g.*, the canonical collection of Anselm of Lucca (Migne, *P. L.*, 149, p. 523 sq.) Anselm says that there can be separation in case of adultery, but not remarriage.

[26] *Liber Gomorrhianus* (Migne, *P. L.*, 145, p. 169 sq.).

[27] Burchard (Migne, *P. L.*, 140).

[28] Ives of Chartres (Migne, *P. L.*, 161).

[29] Hincmar's works, ed. by Sirmon, Paris, 1745.

merely after the *"copula carnalis"* had taken place. In his zeal to set forth the doctrine of indissolubility, Ives goes so far as to arrange some of the canons of Verberie [30] so as to bear an orthodox meaning. The fact that he could do so shows that the doctrine and practice of indissolubility held undisputed sway during this time, so that Gratian [31] in his famous "Concordia Discordantium Canonum" (1140) could affirm categorically that the man who puts away his wife for fornication is not free to marry another while she lives.

§ 6. *GRATIAN TO THE COUNCIL OF TRENT (1140–1550)*

From the time of Gratian to the Council of Trent the doctrine of the indissolubility of marriage was undoubted. The struggles of Celestine III (1198) and Innocent III (1216) [1] against the divorce of Philip II of France, like that of Urban II (1098) and Paschal II (1118) against the divorce of Philip I, are too well known to need comment. Special details of the doctrine were brought into prominence at this juncture. The theory of Gratian,

[30] *E. g.*, cans. 5 and 9 of Verberie. He leaves out the last words which permitted the man to remarry and thus the orthodox meaning is brought out.

[31] Gratian, C. 32, q. 7; c. 16, p. 1490 (Migne, *P. L.*, 187); also p. 1395, c. 13, quotes St. Paul 1 Cor. VII, 10 and Rom. VII, 1–4.

[1] Innocent III (*P. L.*, 114; *vide* Epistle 171 to King Philip).

following Hincmar, that marriage was indissoluble only after the *"copula carnalis,"* and that of Peter Lombard, following Ives of Chartres, that even a non-consummated marriage was indissoluble, gave rise to a good deal of discussion between the Bolognese and Gallican schools. This dispute helped at any rate to emphasize two of the most important features of the marriage contract. For a good many years the popes and councils had brought the sacramental aspect of marriage prominently into view; and no dissentient voice was heard until the rise of the Humanist movement. Erasmus (1536) [2] is perhaps the most notable of those who set themselves against the traditional teaching. His views are practically identical with those of present-day Protestants. He allowed the husband of an adulterous wife to remarry [3] and goes so far as to say that St. Paul would have permitted a newly married couple to dissolve their marriage for incompatibility of temperament, discord, and such like causes. At all events, he thinks, St. Paul would not have imposed such a severe penance on Fabiola as St. Jerome did. The spirit of the time was to break away from Church authority. And so we find that Luther and the other "Reformers" were quick to seize on the views of Erasmus and to make marriage "a purely secular affair." They demanded that

[2] *Annotationes in 1 Cor.*, col. 695 and col. 701.
[3] *Op. cit., passim.*

some concession should be made to weak human nature, as in the old days the *"libellum repudii"* was permitted to the Jews. Adultery, according to Luther, broke the marriage bond, and the innocent party was free to remarry. As the Bible was the sole rule of faith for the Reformers, it was to be expected that a good deal of attention would be focussed on the scriptural passages dealing with marriage. Thus we find that they interpreted St. Matt. V and XIX and St. Paul Rom. VII, 17 in the loose sense that a Christian is allowed to divorce his wife not only for adultery, but also for other equally grave crimes. Calvin,[4] however, admitted only fornication (*scortatio*) as such a ground, and he adds that the law of the Church forbidding the innocent party to remarry is unjust.

This lax tendency of the "Reformers" had its effect even on Catholic writers such as Cajetan (1543) [5] and Catharinus (1553).[6] Cajetan held that the decisions of the popes and councils on marriage questions were not infallible, as they were not doctrinal, but merely juridical. Popes Alexander III (1181) and Innocent III (1216) [7] admitted that

[4] *Comment. in Harm. Evangel., ad Matt. XIX,* 9.

[5] Commentary on the Four Gospels, Venice, 1530, *In Matt.,* XIX, 9.

[6] *Annotationes contra Caietanum,* lib. V, Lugduni, 1542.

[7] Referred to by Cajetan, *op. cit.* The Decretal of Alexander III is quoted in the collected Decretals of Gregory IV, Tit. III, p. 554; that of Innocent III in Bk. IV, tit. XX, of the same work. The latter in all probability refers to the case of Celestine

some of their predecessors had differed from them in certain important details. Catharinus held practically the same view as Cajetan, except that he required the permission of the Church [8] for a second marriage in case of adultery. Both Cajetan and Catharinus recognized that their views were novel, and the former submitted his opinion to the judgment of the Church. Probably neither would have put forward these extreme views had they not been convinced that St. Ambrose had asserted like opinions in his "Commentary on the Corinthians,"—a work which has since been proved to have been falsely attributed to that Church Father.

III, who allowed a woman to remain married to a second husband while her first husband was still alive. The latter had abandoned Christianity and the Pope seemingly thought that the marriage was dissolved by the Pauline Privilege. Even though he did think so, this is no argument against papal infallibility, for it was not an *ex cathedra* pronouncement and merely concerned a particular case. Nor can it be argued that this Pope was against "indissolubility," for he opposed the divorce of Philip II. There was a good deal of discussion at this period also as to when a marriage became indissoluble, whether after or before the *copula carnalis*. So Cajetan quotes Celestine wrongly in this connexion. Innocent III in referring to Celestine (*loc. cit.*) defends the indissolubility of Christian marriage once contracted, in the same way as St. Augustine would have defended it, *viz.*, by emphasizing its sacramental aspect. The *"sacramentum fidei"* once admitted *"inter fideles"* can never be lost, even though there is greater *"contumelia Creatoris"* in the case of an apostate husband than of an infidel husband.

[8] *Op. cit.*, p. 500.

In 1526 the theological faculty of the University of Paris condemned four propositions permitting divorce and remarriage in case of the unfaithfulness of the wife.[9] They were taken from the works of Erasmus, who replied that he had only meant to uphold a modified form of divorce, *"separatio tori."* But the seed which he had scattered had taken root, and Clement VII, who preferred to lose England to the Church rather than abandon the principle of indissolubility, resolved to convoke the Council of Trent, where all the lax ideas of the "Reformers" might be carefully considered on this as on other matters.

We can only outline that section of the Council which deals with marriage. The proposition presented to the *"theologi minores"* in February, 1563, was: *"Licere post repudiatam uxorem causa fornicationis iterum contrahere?"* [10] All the theologians who took part in this discussion were in favor of indissolubility, but they found it necessary to consider closely the pronouncements of Christ (Matt. V and XIX) and the attitude of the early Fathers of the Church. Again the alleged attitude of St. Ambrose on this question was brought up for dis-

[9] Quoted in Tournely's Dogmatic Theology, Vol. 5, Paris, 1757, p. 100 sq.

[10] Theiner, *Acta Genuina Sacrosancti Concilii Tridentini,* and Pallavicini's *History of the Council of Trent,* French translation, from which I take the above account (Vol. III, p. 432 sq.).

cussion. Nevertheless they interpreted St. Matthew V and XIX in the light of St. Mark XIII and St. Luke XVI, 18, and submitted to the Fathers of the Council the proposition "that those who held the view contained in the proposition which had been set forth should be declared anathema." Although the Fathers of the Council were all in favor of indissolubility, they did not wish to define the proposition in this extreme form out of reverence for pseudo-Ambrose and some doubtful pronouncements of certain early councils, but preferred to have it declared that the Church was not in error when she interpreted the text of Matt. V and XIX as not allowing dissolution of marriage *"quoad vinculum"* for fornication. The proposition was sent back to the *"theologi minores"* in its amended form, and whilst they were discussing it, some ambassadors came from the Republic of Venice and represented that there were many of their most loyal subjects, members of the Greek Church, who recognized the papal supremacy, but had been taught for ages that the marriage bond could be broken for adultery, and would be gravely offended if they were declared heretics. This fact seems to have confirmed the "theologians" in the milder view, and so they submitted the proposition to the Fathers for definition in this form: "The Church does not err when she teaches that, according to the evangelical and apostolic doctrine, marriage is not dissolved by the adultery of

either spouse and that a new marriage is not permitted either to the innocent or to the guilty spouse during the lifetime of the other."

This proposition, with a few minor changes, was finally approved in the following November (1563); the new form it took had *"docuit"* in addition to *"docet,"* to emphasize the fact that the Church's attitude towards the question of indissolubility has remained unchanged all down the ages.

The decision was not merely a "juridical" one, for the "anathema" is levelled against those who assert that the Church is in error on a doctrinal matter. At the same time the Greeks and early writers who upheld divorce for adultery were not stigmatized as formal heretics.

There was no further room for doubt. The Protestant attitude towards divorce has not changed fundamentally since the time of Erasmus. Experience, however, has taught that the Bible alone is not a sufficient rule of faith. And so High Church Anglicans are now inclined to take account of the attitude of the Church towards divorce at certain periods of her existence.[11] They think that Christ has given her power to dispense so far as to

[11] Dr. Gore, *Divorce in the New Testament*, p. 42, says: "Such concession in one case [divorce for adultery followed by remarriage of the innocent party] can . . . be justified by the precedent set by the Jewish Christian Church of Palestine, and this fact must be frankly recognised."

allow the innocent party to remarry in case the other has been guilty of adultery, and they allege that the Church made use of this power in regard to the Jewish Christians of Palestine in the first century. It was owing to this dispensation that the exceptive clauses in Matt. V and XIX were inserted.[12] Again they would have us believe that our Lord did not mean to legislate when He spoke of marriage and divorce in the Sermon on the Mount, but only wished to uphold an "ideal," [13] to which Christians might aspire, even though several years might pass before that "ideal" was realized in the Christian community. The Modernistic coloring of this position is evident. Even the plain doctrine which Christ proposed to his followers must go through the mill of evolution to be finally sifted! Surely if Christ ever meant to legislate, it was when He took the place of Yahweh and said: "It was said of them

[12] "These words were inserted by the editor and doubtless reflect the current practice of the Palestinian Church when he [*i. e.*, St. Matthew] wrote." (Gore, *op. cit.*, p. 39.)

[13] Dr. Macfadyen, quoted in Gore (*op. cit.*, p. 45). Gore (*op. cit.*, p. 46), although admitting that Christ was legislating in Matt. V, still speaks of "lowering the standard of Christian doctrine and practice all round," *e. g.*, by compelling the "innocent party" to put away the adulteress and marry again. Dr. Charles, too, seems to think there are times in the history of Christianity when this "ideal" cannot be realized. Compare his teaching with that of Erasmus on this question. It is as lawful, he thinks, to dismiss a quarrelsome wife at certain times and to marry another, as to dismiss an adulteress (*op. cit.*).

of old; . . . but *I* say to you . . ." And the Church which He has founded has never misunderstood this divine message. Her attitude towards the indissolubility of marriage, as towards the other doctrines committed to her keeping, is as unchanged as her Divine Founder Himself.

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